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January 25, 1996

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Re: I96-002 (R95-044)

Dear Mr. Calderón:

You recently submitted an education opinion for our review pursuant to A.R.S. § 15-253(B) concerning a school district consolidation plan for Clifton Unified District No. 3 and Morenci Unified District No. 18. We concur with your overall conclusion that the only portion of the consolidation plan binding on the new governing board of the consolidated school district will be the actual boundary changes. However, we revise the opinion to clarify that the consolidated school district may not immediately implement an alternative election method and that federal preclearance of only those portions of the consolidation plan affecting voting rights must be obtained under Section 5 of the Voting Rights Act of 1965, as amended, before consolidation can take effect. Because the issue of consolidation is one of statewide interest and others will not have ready access to your thorough and reasoned opinion, we have provided the statutory background and legal analysis in this opinion for the convenience of other readers.

Background

Section 15-459, A.R.S., establishes the procedures for consolidation of two or more school districts. The consolidation process begins when either (a) the governing boards of two or more school districts in the same county or in adjacent counties request consolidation or (b) at least ten percent of the qualified electors who voted in whichever of the last two general elections resulted in the higher number of ballots cast and who reside in each of the school districts submit signed petitions to consolidate. A.R.S. § 15-459(A). Within ten days of receiving the request or petitions, the county school superintendent of each of the counties affected shall call an election on the question of consolidation. *Id.* The election shall be

held during the fiscal year preceding the fiscal year consolidation is proposed to be effective, either on the same date as the general election or on the second Tuesday in March. A.R.S. § 15-459(F).

Prior to the election, the county school superintendent must prepare a report on the proposed boundary changes. A.R.S. § 15-459(D). This consolidation report must contain the date of the election, the polling places and times they are open, and a consolidation plan that contains the elements listed in A.R.S. § 15-459(D)(3)(a)-(c). *Id.* Specifically, the county school superintendent's consolidation plan must contain: the proposed boundary changes; the impact of the boundary changes on where the pupils will attend school, pupil transportation services, availability of special education services, pupil-teacher ratio and operational costs;[1] and a detailed description of desegregation funding and expenses for the resulting school district if A.R.S. § 15-459(P) applies.[2] A.R.S. § 15-459(D)(3)(a)-(c). The county school superintendent may also add any other appropriate information concerning the consolidation. A.R.S. § 15-459(D)(3)(d). The governing boards of the districts participating in the proposed consolidation distribute the consolidation report (including the consolidation plan) to the public in a manner similar to the Informational Report and Sample Ballot distributed for budget override elections. A.R.S. § 15-459(D).[3]

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[1]As for exactly what level of detail the consolidation plan must contain on these five impact issues, we agree with your observation that it would be

> an insufficient description of the impact of the proposed boundary change on the new district's operational costs [to simply state that "operating costs will be those necessary to provide for a quality education within the new district"]. The statute calls for a detailed description of the impact of the proposed boundary changes, and merely stating that operational costs will be 'those necessary' is insufficiently descriptive to allow voters to accurately consider the consolidation proposal.

[2]Section 15-459(P), A.R.S., states that "[i]f one or more of the previously existing school districts was authorized to budget for expenses of complying with or continuing to implement activities that were required or permitted by court order of desegregation or administrative agreement with the United States department of education office for civil rights directed toward remediating alleged or proven racial discrimination pursuant to § 15-910, this authorization does not expire on the effective date of consolidation but only applies to schools included in the court order or administrative agreement." *See also* Ariz. Att'y Gen. Op. I95-019.

[3]For school districts located in a county with a population of two hundred thousand persons or more, A.R.S.§ 15-481(B) calls for mailing or distributing the report to the households in which qualified electors reside within the district at least thirty days prior to the election. For school districts located in a county with a population of less than two hundred thousand persons, the governing board is to distribute the consolidation report to the households within the school district at least thirty days prior to the election. *Id.*

The purpose of the consolidation plan is to provide the public with specific information on which voters can base their decision whether to support the proposed consolidation. *See* A.R.S. § 15-459(D). Indeed, the ballots for the election essentially incorporate the consolidation plan by reference because the ballots must contain the following question:

> Consolidation includes the assumption of liability by the resulting school district for all indebtedness of the existing school districts or those parts of the school district proposed for consolidation. Do you support consolidation under the specified provisions of the consolidation plan? Yes ( ) No ( ).

A.R.S. § 15-459(E) (emphasis added).

If the majority of the votes cast in each district favors consolidation, consolidation occurs and the districts become one after June 30 following the election. A.R.S. § 15-459(G). Governing board members of the districts that were consolidated all continue to serve as the new governing board of the consolidated district. A.R.S. § 15-430(A). Their terms do not expire until January 1 following the next general election. *Id.* At the general election following consolidation, five board members are elected as prescribed in A.R.S. § 15-427(B). A.R.S. § 15-430(B). The newly-elected board takes office on January 1 following the general election. *Id.*

The governing board of the consolidated district is mandated to prepare policies, curricula and budgets for the new school district that include base salaries and benefits of each employee for the first year of operation. A.R.S. §§ 15-459(M)(1), (2). The new governing board also has specific authority to reduce staff and scale back salaries of certified teachers, administrators or noncertified employees to improve economy or efficient conduct of the schools in the consolidated district. A.R.S. § 15-459(M)(3).

Analysis

A. Except for the Boundary Changes, the Consolidation Plan Is Not Binding on the New Governing Board of the Consolidated District.

The focus of the inquiry into whether the county school superintendent's consolidation plan is binding on the consolidated governing board must begin with the laws establishing the

powers of the governing board and any restrictions placed on that power.[4]

Three sources of governing board power are relevant to our inquiry: A.R.S. § 15-459(M) ("[t]he [new] governing board shall prepare policies, curricula and budgets for the new school district"), A.R.S. § 15-341 (general powers and duties of school district governing boards), and A.R.S. § 15-342 (discretionary powers of school district governing boards). Review of these grants of power demonstrates that -- except for the boundary changes -- the consolidation plan prepared by the county school superintendent cannot be binding on the new governing board.

Principles of statutory construction require that provisions of statutes be construed in the context of related statutory provisions and in light of their place in the statutory scheme. *Grant v. Board of Regents of Universities and State Colleges of Arizona*, 133 Ariz. 527, 652 P.2d 1374 (1982). When legislation on a particular subject consists of a system of related general provisions indicating settled policy, new enactments that are fragmentary in nature on the subject should be interpreted as intended to fit into the existing system and should be carried into effect comfortably unless a different purpose is shown. *United States v. State of Arizona*, 295 U.S. 174 (1935). Additionally, it is presumed that the Legislature knows existing laws when it enacts or modifies a statute. *State v. Garza Rodriguez*, 164 Ariz. 107, 791 P.2d 633 (1990).

Given the powers and duties of school boards authorized by the entire statutory scheme, there is no indication in A.R.S. § 15-459 that the Legislature intended to remove power from the new governing board through the voters' approval of the consolidation plan and thereby leave a consolidated school district board with less powers to govern and manage school affairs than other schools. Therefore, notwithstanding the provisions of the county school superintendent's plan, the new governing board has authority to reduce the number of school staff (A.R.S. § 15-459(M)(3)), provide transportation for school children (A.R.S. § 15-342(12)), provide for adequate supervision of pupils in instructional and noninstructional activities by certificated or noncertificated personnel (A.R.S.§ 15-341(17)), and provide

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[4]Resort to secondary sources of statutory interpretation, such as reviewing the legislative history of the consolidation ballot language and comparing the consolidation report to the override report in A.R.S. § 15-481(B) and the publicity pamphlet in A.R.S. § 19-123, is unnecessary when the statutory language is clear and unambiguous. *See State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (1993) ("We look first to the statute's language because we expect it to be 'the best and most reliable index of a statute's meaning.' If the language is plain, we need look no further.") (citations omitted).

special education and related services to all children with disabilities (A.R.S. § 15-341(30)).[5]

The Arizona Court of Appeals recognized this general principle of governing board power in *Garrett v. Tubac-Amado School Dist. No. 5 of Santa Cruz County,* 9 Ariz. App. 331, 451 P.2d 909 (1969). In that case, A.R.S. § 15-442(A)(11) required the school board to obtain approval from the electorate to sell school property to a buyer other than the state, county, or city. *Id.* at 333, 451 P.2d at 910-11. The electorate approved the sale, but the vote did not establish the manner of sale or selection of the buyer. *Id.* Those questions were left to the discretion of the school board. *Id.* The court recognized that if the electorate were able to limit the types of persons to whom the property could be sold, there would be an infinite number of limitations that could be proposed. *Id.* The court found no provision in law that enabled the electorate to place such restrictions on the school board.

The same practical problems would be presented with limiting the new governing board's powers through a consolidation plan. First, there is no statutory language that allows the electorate to limit the governing board's specific statutory power or its authority to operate the school for the public good. Second, a county school superintendent could severely limit the new governing board's authority through the consolidation plan and prematurely decide issues for the consolidated district. Finally, it would be impossible for the consolidation plan to precisely establish the exact impact of the boundary changes, including pupil-teacher ratio, where pupils will attend school, extent of transportation services, availability of special education services, and operational costs. Tying the hands of the governing board to deal with these issues directly once the consolidation occurs would promote poor management and lack of accountability to the public. Thus, we avoid interpretations that lead to absurd results and could not have been contemplated by the Legislature. *City of Phoenix v. Superior Court in and for Maricopa County*, 144 Ariz. 172, 696 P.2d 724 (App. 1985).

We note, however, that the new governing board should recognize and respect the voice of the public in relying on the consolidation plan in approving consolidation. The public has the assurance that the discretion vested in the new governing board must be exercised with great care, in a reasonable manner and in good faith for the best interests of the people of the school district on terms that are just and equitable with regard only for the public interest. *Dick v. Cahoon*, 84 Ariz. 199, 325 P.2d 835 (1958).

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[5]The relevant powers of school district governing boards have existed since 1981, with the exception of the specific mandate enacted in 1991 to provide special education and related services. 1981 Ariz. Sess. Laws, Ch.1, § 2; 1991 Ariz. Sess. Laws, Ch. 173, § 1. The current provisions of A.R.S. § 15-459(D)(3)(a)-(b) were not enacted until 1985. 1985 Ariz. Sess. Laws, Ch. 238, § 7.

Finally, we are persuaded by the logic in your example exposing the rationale for the new governing board to have authority to adjust the county school superintendent's plan regarding pupil-teacher ratios:

> A.R.S. § 15-459 mandates that the new district's pupil-teacher ratio be included in the Consolidation Plan. A.R.S. § 15-459(D)(3)(b). However, the same statute also specifically directs the interim Governing Board to prepare policies, curricula and budgets for the new school district. A.R.S. § 15-459(M). It also expressly reserves the Governing Board's right to implement a reduction-in-force and thereby change the district's public-teacher ratio. *Id.* Because the interim Governing Board has the right to reduce the number of certified teachers in the district, the pupil-teacher information contained in the County School Superintendent's Consolidation Plan cannot be binding on the new Governing Board.

B. Alternative Election Methods Are Not an Immediate Option for a Consolidated School District.

The statute controlling the election of governing board members of newly consolidated districts states:

> At the next general election held following the consolidation and thereafter, five members shall be elected as prescribed in § 15-427, subsection B. The new board shall take office on January 1 following the general election.

A.R.S. § 15-430(B) (emphasis added). Section 15-427(B)(2), A.R.S., provides:

> At the first general election after the formation of the district, members shall be elected in the following manner:
>
> > (a) The three candidates receiving the highest, the second highest and the third highest number of votes shall be elected to four year terms.
> >
> > (b) The two candidates receiving the fourth and fifth highest number of votes shall be elected for two year terms. Thereafter all such offices shall have four year

terms.

Thus, the statutes specifically require an at-large election process at the next general election following consolidation "and thereafter," with the five candidates receiving the most votes taking office.

Unlike the alternative election procedures for governing boards authorized in A.R.S. §§ 15-427(A) and -429(A), neither A.R.S. § 15-427(B) nor A.R.S. § 15-430(B) permits an alternative election procedure. Consequently, the consolidated board must follow the election procedures specifically established in A.R.S. §§ 15-427(B) and -430(B). Based on A.R.S. § 15-430(B), alternative election methods to select initial governing board members are not an immediate option to newly consolidated school districts.[6]

C. Federal Preclearance Must Be Obtained Before Any Boundary Changes May Be Implemented.

We concur with your opinion that the proposed school district boundary changes must be precleared under the Voting Rights Act before consolidation may be implemented. However, out of concern that others may misinterpret your statement that "every provision in the Consolidation Plan is subject to U.S. Department of Justice scrutiny before it can take effect," we revise your opinion to clarify that federal preclearance is necessary only for those items of the consolidation plan that affect voting rights.

The Voting Rights Act of 1965, as amended, requires covered jurisdictions to obtain preclearance of any changes of "[a] voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect [on the date used to determine coverage]." 42 U.S.C. § 1973c; Voting Rights Act Amendments of 1975, 40 Fed. Reg. 43746 (1975); 28 C.F.R. § 51.1 (1995). Arizona (and all of its political subunits, including school districts in Greenlee County) was determined to be a covered jurisdiction on November 1, 1972. 28 C.F.R. § 51.6. To obtain preclearance, a school district must receive approval of either the United States Attorney General or obtain a judicial determination from the U. S. District Court for the District of Columbia that the boundary changes do "not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color...." 42 U.S.C. § 1973c.

Changing the school district's boundaries implicates voting rights because it would

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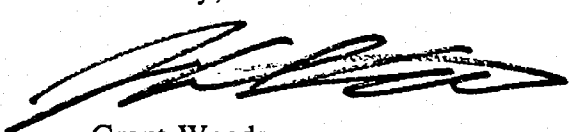
[6]We do not address at this time whether an alternative election method would be authorized or prohibited for districts that have consolidated, and reserve determination of the issue to a time when it is squarely presented to us.

alter the composition of the electorate that may vote for candidates for a given office, as well as both create and abolish elective offices. *Presley v. Etowah County Comm'n*, 112 S. Ct. 820, 828 (1992). Therefore, the boundary changes must be precleared before they can be implemented. However, other aspects of the consolidation plan (*e.g.*, the proposed new pupil-teacher ratio) do not have to be precleared because they do not involve voting rights. *Id.* at 829 ("no one would contend that when Congress enacted the Voting Rights Act it meant to subject all or even most decisions of government in covered jurisdictions to federal supervision").

Conclusion

Upon review of the opinion concerning the proposed consolidation of the Clifton and Morenci school districts, we find that (1) except for the actual boundary changes approved by the voters, the elements of the county school superintendent's consolidation plan may be modified by the governing board of the consolidated school district pursuant to the board's statutory authority; (2) the consolidated district may not immediately implement an alternative election plan, and is required to follow the at-large election method established in A.R.S. §§ 15-427(B) and -430(B); and (3) pursuant to the Voting Rights Act of 1965, as amended, before any boundary changes may be implemented, the changes must receive federal preclearance.

Sincerely,



Grant Woods
Attorney General